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Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

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Committee against Torture

Decision adopted by the Committee under article 22 of the Convention, concerning communication No. 625/2014*, **

Communication submitted by	G.I. (represented by counsel, Niels-Erik Hansen)
Alleged victim	The complainant
State party	Denmark
Date of complaint	14 August 2014 (initial submission)
Date of present decision	10 August 2017
Subject matter	Deportation to Pakistan
Procedural issue	Level of substantiation of claims
Substantive issues	Non-refoulement; risk of torture upon return to country of origin
Article of the Convention	3

1.1 The complainant is G.I., a national of Pakistan born on 1 November 1980. He is a Christian by birth. He claims that his removal to Pakistan would constitute a violation by Denmark of article 3 of the Convention. He is represented by counsel. Denmark made the declaration under article 22 of the Convention on 26 June 1987.

1.2 On 26 August 2014, pursuant to rule 114 of its rules of procedure, the Committee, acting through its Rapporteur on new complaints and interim measures, requested the State party not to expel the complainant while the complaint was being considered.

Factual background

2.1 The complainant is a national of Pakistan born on 1 November 1980. He is Christian by birth. He used to live in Iqbal Town, Islamabad. In 2004, he became a member of a religious organization called "Jesus Hope of Life". His main task within the organization was to share the Bible with people of other religions.[1] In June 2008, he had an argument

* Adopted by the Committee at its sixty-first session (24 July-11 August 2017).

** The following members of the Committee took part in the examination of the communication: Essadia Belmir, Alessio Bruni, Felice Gaer, Abdelwahab Hani, Claude Heller Rouassant, Jens Modvig, Ana Racu, Sebastien Touzé and Kening Zhang.

[1] The complainant provides a letter from the Jesus Hope of Life organization dated 27 June 2014, indicating that the complainant was a former member and that he would be at risk if he were returned to Pakistan because preaching Christianity is considered blasphemy, which can be punished by execution, crucifixion, or cutting hands and feet from opposite sides. The letter also indicates that the complainant had been attacked while in Pakistan because of the activities he carried out for the organization, in particular distributing Bibles to Muslim communities, and that the organization had

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about Islam and Christianity with a mullah, during an event held at the Christian Study Centre of Islamabad. The mullah verbally threatened the complainant. Later, on 15 January 2010, the complainant's car was stolen and three days later, he received a letter threatening him with "serious consequences" if he continued to preach the Bible.[2]

2.2 On 10 August 2011, the complainant was attacked and beaten by three unknown men while he was driving his taxi. He indicates that the three men got into the taxi and asked him to stop at a place called Bani Gala. There, the three men hit him on the head with a rock and cut his wrist. The complainant claims that the men told him that this was the consequence of not having stopped preaching his "false God". He lost consciousness and woke up at the Pakistan Institute of Medical Sciences, where he stayed for approximately 10 days.[3]

2.3 The complainant further indicates that on an unspecified date, four police officers attacked him while he was in his taxi at the taxi stand. They blindfolded him and took him to a police station where they beat him, hung him from the ceiling upside down and plugged water into his nose. They accused the complainant of distributing the Bible among Muslim people and told him that he should accept Islam. Then, they falsely accused him of illegal alcohol possession, alleging that he was hiding 24 bottles of alcohol in his taxi. As a consequence, the complainant was charged and detained. After being detained for about one week, he was released on bail paid by the President of the Jesus Hope of Life organization. The complainant indicates that he has visible scars on his forehead, arms and legs as a result of this incident.[4]

2.4 The complainant further states that on 3 January 2014, he received a letter at his home threatening to kill him and his family. Consequently, he moved his spouse and children from Islamabad to Faisalabad where his wife's parents live and he left Pakistan. In his interview with the Danish Refugee Appeals Board, he indicated that after he had left Pakistan, a number of persons had contacted his family asking about his whereabouts, and that his family was therefore considering moving to another location. The author claims that he has not sought protection from the authorities in Pakistan because they do not protect Christians: for example, in 2014, a Christian boy was killed in a police station and the authorities did not take any action.

2.5 On 12 February 2014, the complainant entered Denmark without valid travel documents. On an unspecified date, he applied for asylum. On 23 May 2014, the Danish Immigration Service rejected his asylum claim and refused to grant him a residence permit. On 4 August 2014, the Refugee Appeals Board confirmed the decision of the Immigration Service and rejected his asylum claim. The Board found that the complainant's explanations were constructed for the occasion. It found that it was unlikely that the complainant had been persecuted because of his religion in Pakistan, taking into account that the alleged incidents linked to such persecution took place "every year or year and a half". In addition, the Board considered that, although the complainant had made consistent statements regarding the events claimed as his grounds for asylum, he had given very vague and evasive answers when asked about certain details. For instance, when his car was stolen, the complainant reported the theft to the police, but he did not report the threatening letter he had received. When asked why he did not, he replied that it was because the police officers were Muslims and therefore they would not protect him. The Board also found that the complainant's statements regarding the threatening letter dated 15 January 2010 were not consistent with the letter produced during the hearing before the Board: in his interviews with the Immigration Service, the complainant indicated that the letter was

also been the object of threats that had forced its members to change their names and the location of their offices.

[2] The complainant does not provide further details on this incident and has not provided the threatening letter to the Committee.

[3] The complainant does not provide any document to support this allegation.

[4] The complainant provides a picture of his scars and a medical certificate from the Mother and Child Health Care Centre (Pakistan Institute of Medical Sciences in Islamabad), dated 20 August 2011, which indicates that, on 10 august 2011, the complainant was admitted at the centre and that he had a femur fracture and injuries to his left hand and forehead. Owing to the seriousness of his injuries, he was in critical condition that required surgery.

unsigned, while the document provided to the Board was signed by a religious group. In addition, the Board considered as not plausible the explanations given by the complainant as to why the mentioned letter, presented only after the asylum claim was rejected, was not provided at an earlier stage of the asylum proceedings.[5] Although the Board considered that it could not be ruled out that, according to the picture provided by the complainant, the scars on his leg were consistent with his allegation that they were caused by the assault he suffered in 2011,[6] it concluded that, in view of their nature, the author's injuries could also have been sustained in another context. In view of the issues surrounding the credibility of the complainant, the Board considered that even if the injuries were the result of the attack described by the complainant, it would not change its own assessment, namely that if returned, the complainant would not be at risk of persecution in Pakistan.

2.6 As regards the incident in the police station, the Board found it unlikely that the arrest had a motive other than possession of alcohol, which corresponds to the content of the police report submitted by the complainant to the Board. In addition, the Board considered that the complainant's claim that he had been assaulted when he was arrested in connection with such charges would not change its assessment, as he had been subsequently released and has not been contacted in connection with those charges. The Board emphasized the fact that the injuries suffered by the complainant were not permanent compared with the long period of time that had elapsed between that incident, his release and his departure from the country. Finally, as regards the complainant's request to stay proceedings pending the result of a medical investigation into his claims of torture, the Board found no reason to do so, since the outcome of such an investigation would not affect its decision on his asylum application.

2.7 The complainant indicates that he has exhausted all available domestic remedies as the decisions by the Board cannot be appealed.

The complaint

3.1 The complainant submits that his deportation to Pakistan by the State party would constitute a violation of its obligations under article 3 of the Convention since he would be at risk of being persecuted and tortured by members of the Muslim community owing to his Christian beliefs and activities, the reason for which he has already been harassed, threatened and attacked. In addition, he claims that the authorities in Pakistan would not protect him or investigate any claims of torture that he might make because he is a Christian.

3.2 The complainant claims that despite his visible scars, which resulted from the torture he was subjected to in Pakistan, the State party has denied him a medical examination. He claims that his complaint is identical to those found in *Amini v. Denmark*[7] and *K.H. v. Denmark*,[8] in which the Committee found a violation of the Convention, because the State party rejected the complainants' requests to carry out a medical examination in order to determine if they had been tortured. He further indicates that in one of the cases mentioned — *K.H. v. Denmark* — the State party's failure to protect the complainant from refoulement has had dramatic consequences, as he was subjected to torture after being deported to his country of origin.

3.3 The complainant further claims that in the event that he is returned to Pakistan, he will be at risk of being interviewed and tortured by the police upon arrival at the airport, owing to the visible scars on his legs, arms and forehead.

3.4 The complainant also claims the existence of a pattern of massive human rights abuses and use of torture in Pakistan and refers to the "UNHCR Eligibility Guidelines for

[5] In the Board's decision of 4 August 2014, it is indicated that when asked why he had not previously stated that he had this document, he replied that he had not attached much importance to the letter, but that he had subsequently spoken to his counsel, who had advised him to gather evidence.

[6] See para. 2.2 above.

[7] See communication No. 339/2008, *Amini v. Denmark*, decision adopted on 15 November 2010.

[8] See communication No. 464/2011, *K.H. v. Denmark*, decision adopted on 23 November 2012.

Assessing the International Protection Needs of Members of Religious Minorities from Pakistan", which includes Christians among potential groups at risk.[9]

State party's observations on admissibility and the merits

4.1 On 26 February 2015, the State party submitted its observations on admissibility and the merits of the complaint. It maintains that the complaint is manifestly unfounded and therefore inadmissible. Should the Committee find that the complainant's allegations are admissible, the State party submits that there is no supported evidence or substantial grounds for believing that the complainant would be in danger of being tortured if returned to Pakistan.

4.2 The State party describes the structure and composition of the Board. The Board's activities are based on section 53a of the Aliens Act, according to which it addresses all the decisions of the Immigration Service that are appealed, unless the applications are considered manifestly unfounded. The Board is an independent, quasi-judicial body and is considered a court within the meaning of article 39 of the Council of the European Union Directive on minimum standards on procedures in Member States for granting and withdrawing refugee status (2005/85/EC). Under the Aliens Act, the Board members are independent and cannot seek directions from the appointing or nominating authorities. The Board's decisions are final. Aliens may, however, lodge an appeal before the ordinary courts, which can adjudicate on any matter concerning the limits of a public authority's competence. As established by the Supreme Court, the ordinary courts' review of decisions by the Board is limited to points of law; the Board's assessment of evidence is not subject to review.

4.3 The State party also describes the proceedings before the Board. Those proceedings are oral. The Board may, if needed, assign a legal counsel to the asylum seeker free of charge. The decisions of the Board are made on the basis of an individual and specific assessment of the relevant case, and the asylum seeker's statements regarding his grounds for asylum are assessed in the light of all relevant evidence, including what is known about the conditions in his country of origin. In this connection, the State party attests that the Board has a comprehensive collection of general background material on the situation in countries from which Denmark receives asylum seekers, including information from the Office of the United Nations High Commissioner for Refugees, the Ministry of Foreign Affairs of Denmark, the Country of Origin Information Division of the Danish Immigration Service, the Danish Refugee Council and other reliable sources.

4.4 As regards the legal basis on which asylum is granted, the State party indicates that, pursuant to section 7 (1) of the Aliens Act, a residence permit will be issued to an alien if he or she falls within the definition of a refugee outlined in the Convention relating to the Status of Refugees. Pursuant to section 7 (2) of the Aliens Act, a residence permit will be issued if an asylum seeker risks the death penalty or being subjected to torture or inhuman or degrading treatment or punishment in case of return to his or her country of origin. In addition, according to section 31 (2) of the Aliens Act, no alien may be returned to a country where he or she will face persecution in the terms established in the Convention.

4.5 The State party indicates that the fact that an asylum seeker has been subjected to torture or ill-treatment in his country of origin may be an essential point in the assessment made by the Board of whether the conditions required by section 7 (1) of the Aliens Act are met. However, according to the Board's case law, the conditions for granting asylum cannot be considered satisfied in all cases where an asylum seeker has been subjected to torture in his country of origin. The State party refers to *A.A.C. v. Sweden*, in which the Committee considered that previous experience of torture is only one consideration in determining whether a person faces a personal risk of torture upon return to his country of origin, and that it must consider whether or not the torture occurred recently, and in

[9] Office of the United Nations High Commissioner for Refugees (UNHCR), *UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Members of Religious Minorities from Pakistan*, 14 May 2012. Available at www.refworld.org/docid/4fb0ec662.html.

circumstances that are relevant to the prevailing political realities in the country concerned.[10]

4.6 The State party also indicates that when torture is invoked as grounds for asylum, the Board takes into account factors like the nature of the torture, including the extent, grossness and frequency of the abuse, the asylum seeker's age, and the time elapsed between the alleged torture and the asylum seeker's departure from his or her country of origin. The State party further indicates that a crucial point for a review of an asylum claim is the situation in the country of origin at the time of the potential return of the asylum seeker and refers to *M.C.M.V.F v. Sweden*, in which the Committee took into account the change of situation in the country of origin of the complainant — El Salvador — where the armed conflict had ceased 10 years before the complaint was brought to the Committee.[11] In addition, the State party indicates that the Board takes into account information on whether systematic, gross, flagrant or mass human rights violations take place in the country of origin.

4.7 Regarding the complainant's allegation related to the State party's refusal to conduct a medical examination in order to look for signs of torture on his body, the State party indicates that when torture is invoked as grounds for asylum, the Board may order such an examination, but that this decision is only taken during the Board's hearing, as the assessment of the need for a medical examination depends on the asylum seeker's statements, in particular his or her credibility. Therefore, the Board generally does not order an examination for signs of torture when the asylum seeker has lacked credibility during the asylum proceedings. Furthermore, even if the Board considers it proved that the asylum seeker has previously been subjected to torture, if it finds that there is no real risk of torture upon return at the present time, it will not order a medical examination. The State party refers to *M.O. v. Denmark*,[12] in which the Committee considered that there had not been a violation of the Convention due to the complainant's lack of credibility, despite his statement that he had been subjected to torture and the medical evidence he had provided to demonstrate this allegation.[13] The State party also refers to the judgment of the European Court of Human Rights in *Cruz Varas and others v. Sweden*,[14] in which the Court found that despite the medical evidence provided by the applicant, substantial grounds had not been shown for believing that the applicant's expulsion would expose him to a real risk of being subjected to inhuman or degrading treatment upon return to his country of origin, due to the inconsistencies of his statement during his asylum proceedings. The State party considers, therefore, that as decided by the Board, there was no need to conduct a medical examination in the present case, taking into account the lack of credibility of the complainant.[15] It adds that the medical report provided by the complainant, dated 20 August 2011, does not substantiate the complainant's claim that he is a victim of torture.

4.8 Furthermore, the State party maintains that the Board has taken into account all relevant information in its decision of 4 August 2014 and that the complainant has not brought any new information to the Committee. The State party refers to the judgment of the European Court of Human Rights in *R.C. v. Sweden*, in which the Court considered that "as a general principle, the national authorities are best placed to assess not just the facts but, more particularly, the credibility of witnesses since it is they who have had an opportunity to see, hear and assess the demeanour of the individual concerned".[16] The State party indicates that the Board, after making a thorough assessment of the complainant's

[10] See communications No. 227/2003, *A.A.C. v. Sweden*, decision adopted on 16 November 2006, para. 8.3, and No. 466/2011, *Alp v. Denmark*, decision adopted on 14 May 2014, para. 8.6.

[11] See communication No. 237/2003, *M.C.M.V.F et al. v. Sweden*, decision adopted on 14 November 2005, para. 6.4.

[12] See communication No. 209/2002, *M.O. v. Denmark*, decision adopted on 12 November 2003.

[13] The State party also refers to *Alp v. Denmark*.

[14] See European Court of Human Rights, *Cruz Varas and others v. Sweden* (application No. 15576/89), judgment of 20 March 1991, paras. 77-82.

[15] See para. 2.6 above.

[16] See European Court of Human Rights, *R.C. v. Sweden* (application No. 41827/07), judgment of 9 March 2010, para. 52. The State party also refers to the Court's judgment in *M.E. v. Denmark* (application No. 58363/10), 8 July 2014.

credibility and his specific circumstances, found that he had failed to demonstrate that he would be at risk of torture if returned to Pakistan. For instance, based on the time that had elapsed between the incidents mentioned by the complainant as grounds for asylum, the Board found that he had failed to substantiate that he was persecuted for religious reasons, whether by public officials or other groups. In addition, the State party recalls that given that the complainant had made inconsistent and contradictory statements during the asylum proceedings, the Board did not accept them as facts.[17] The State party recalls that the Board found that although the arrest of the complainant in 2012 may have happened, he could not demonstrate that the reason for his arrest was other than illegal possession of alcohol. In addition, it considered that given that he was subsequently released and that he had not been contacted in relation to this matter afterwards, his claim that he had been assaulted during interrogation could not independently justify asylum. The State party further recalls that the Board emphasized the nature of the assault, which resulted in no permanent injuries, as well as the long time that elapsed between his release and his departure from Pakistan.

4.9 The State party considers that the complainant is trying to use the Committee as an appellate body and that his complaint merely reflects the fact that he disagrees with the assessment of his credibility made by the Board. It also indicates that the complainant failed to identify any irregularity in the decision-making process or any risk factors that the Board had failed to take properly into account. The State party refers to the Committee's jurisprudence according to which it is for the State parties to examine the facts and evidence in a particular case, unless it can be ascertained that the manner in which the evidence was evaluated was clearly arbitrary or amounted to a denial of justice.[18]

4.10 The State party further submits that the complainant's allegation that the police would consider him a person of interest upon arrival at the airport in Pakistan owing to his scars has not been substantiated in any way.

4.11 Regarding the complainant's reference to *Amini v. Denmark*,[19] the State party indicates that it is different from the present case, as in that case the complainant provided objective evidence that he had been subjected to torture in his country of origin immediately before his arrival in Denmark. He also demonstrated that he would be at risk of torture if returned. As regards the complainant's allegation that his case is similar to *K.H. v. Denmark*,[20] the State party indicates that, in that case, the Board considered to be true the complainant's allegations that he would be subjected to torture by the Taliban if returned to Afghanistan.

4.12 As regards the general situation of Christians in Pakistan, the State party indicates that it is not of such a nature that the complainant, who was born Christian, risks persecution because of his religion, taking into account that he is a very low-profile person. The State party refers to a report by the Home Office of the United Kingdom of Great Britain and Northern Ireland,[21] according to which there are an estimated three to four million Christians in Pakistan, who, although they experience discrimination and assaults, are not subject to official legal sanctions against them on the basis of their religion.[22] The State party further indicates that legal provisions on blasphemy do not automatically result in criminal charges and imprisonment.[23] The State party also refers to another report by the Home Office, which indicates that, despite discrimination, Christians are able to practice their religion in Pakistan: they can attend church, participate in religious activities and have

[17] See paras. 2.5 and 2.6 above.

[18] See communications No. 148/1999, *A.K. v. Australia*, decision adopted on 5 May 2004; and No. 282/2005, *S.P.A. v. Canada*, decision adopted on 7 November 2006.

[19] See para. 3.2 above.

[20] Ibid.

[21] See United Kingdom, Home Office, "Pakistan: country of origin information (COI) report" (London, 2013). Available at www.refworld.org/docid/5209feb94.html.

[22] The State party also refers to a report in Danish by Landinfo, "Thematic memorandum on Pakistan: situation of Christians", 20 June 2013.

[23] Ibid.

their own schools and hospitals.[24] In addition, the Government is willing to provide protection to Christians who are the victims of attacks by non-governmental actors, and relocation is a viable option.[25]

Complainant's comments on the State party's observations

5.1 On 10 June 2016, the complainant provided comments on the State party's observations. He considers that the State party has failed to demonstrate that his communication is manifestly unfounded and, therefore, it should be declared admissible. In addition, he maintains that such an argument is closely linked to the merits of the communication and that therefore it should be declared admissible. Regarding the merits of the communication, the complainant maintains that it has been demonstrated that the State party has violated article 3 of the Convention, in particular because his request to have a medical examination to determine if he was subjected to torture before arriving in Denmark has been rejected by the State party's authorities.

5.2 The complainant reiterates that that his complaint is identical to *K.H. v. Denmark*,[26] in which the complainant had been denied a medical examination. Following a decision of the Committee, the complainant had to be readmitted to Denmark — after having been deported — and has been granted refugee status. He also reiterates that his case is very similar to *Amini v. Denmark*.[27] The complainant also refers to the Committee's decision in *F.K. v Denmark*,[28] in which the Committee considered that, by rejecting the complainant's asylum application without ordering a medical examination, the State party failed to sufficiently investigate whether there were substantial grounds for believing that the complainant would be in danger of being subjected to torture if returned to his country of origin.

5.3 Regarding the State party's reference to the European Court's judgment in *R.C. v. Sweden*,[29] the complainant indicates that, in that case, the Court disagreed with the State party's conclusion, as it found that the applicant's story was consistent throughout the proceedings and that, notwithstanding some uncertain aspects, such uncertainties did not undermine the overall credibility of his story. The Court declared that article 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms would be violated if the applicant were deported to his country of origin. The complainant maintains that the Court found such a violation because the Swedish authorities should have ordered that a medical examination be carried out to establish the probable cause of the applicant's scars, taking into account that he had made a prima facie case as to their origin.[30]

5.4 The complainant further claims that by denying him the possibility to undergo a medical examination that would have confirmed that he had been subjected to torture, based solely on his credibility, the State party violated article 3 of the Convention. He argues that his case was sufficiently substantiated prima facie, especially through the medical certificate provided by the Pakistan Institute of Medical Sciences, and the letter from the organization Jesus Hope for Life confirming that the complainant had been persecuted because of his activities for the organization.[31] This is confirmed by the fact that when he submitted his asylum application, the Immigration Service did not even ask him to fill in the consent form for a medical examination.

5.5 The complainant also indicates that he should have benefited from a different standard of proof from refugees who have not been subjected to torture, in particular taking

[24] United Kingdom, Home Office, "Country information and guidance Pakistan: Christians and Christian converts" (London, 2016). Available at www.gov.uk/government/uploads/system/uploads/attachment_data/file/566235/Pakistan-Christians_and_Christian_converts.pdf.

[25] The State party refers to UNHCR, *UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Members of Religious Minorities from Pakistan*, p. 41 ff.

[26] See para. 3.2 above.

[27] Ibid.

[28] See communication No. 580/2014, *F.K. v. Denmark*, decision adopted on 23 November 2015.

[29] See para. 4.8 above.

[30] See *R.C. v. Sweden*, para. 53.

[31] See para. 2.1 above.

into account that, as he indicated to the authorities of the State party, he could not remember many events clearly because of the blows he suffered to his head while being tortured. Therefore, by denying him a medical examination, the Board did not respect the principle of the "benefit of the doubt", and applied a wrong standard of proof. The complainant further submits that it is not possible to obtain a medical certificate indicating that a person has been tortured because of his or her activities. Application of the principle of the "benefit of the doubt" and the possibility to undergo a medical examination to confirm that torture had taken place were essential in his case.[32] The complainant also indicates that the State party's authorities have authorized this kind of medical examination in only two cases during the year 2015.[33] He claims that, taking into account that, in 2015, the number of asylum applications was very high, it is questionable that the authorities should only have found it necessary to carry out medical examinations in such a limited number of cases.[34]

5.6 The complainant further indicates that, according to a new bill introduced into Parliament amending the Acts on Legal Aid and the Administration of Justice in respect of lodging and pursuing complaints with the international complaints bodies set up under human rights conventions, cases like his are excluded from legal aid. According to this bill, when the Board decides not to authorize a medical examination, this cannot be invoked as a ground to submit a complaint to the Committee.

State party's further submission

6.1 On 29 March 2017, the State party reiterated that the complaint was inadmissible and that it did not disclose any violation of the Convention. It further indicates that in his comments, the complainant has not provided any new information on the grounds for his asylum application, in particular in relation to his conflicts in his country of origin. It refers to *R.K. v. Australia*,[35] in which the Committee indicated that the risk of torture must be assessed on grounds that go beyond mere theory or suspicion, and that while the risk does not have to meet the test of being highly probable, the burden of proof generally falls on the complainant, who must present an arguable case that he or she faces a foreseeable, real and personal risk. In addition, considerable weight should be given to the findings of the organs of the State party concerned. The State party further argues that the complainant has failed to establish that the assessment made by the Board was arbitrary or amounted to manifest error or a denial of justice, and reiterates that the complainant has also failed to identify any irregularity committed by the authorities during his asylum proceedings.[36]

6.2 The State party refers to *S.A.P. v. Switzerland*,[37] in which the Committee considered that, although the complainants alleged that they had suffered serious injuries and post-traumatic stress disorder as a result of persecution in their country of origin, they had not provided sufficient evidence to allow it to conclude that such injuries had been caused by the alleged acts of persecution by the authorities of their country of origin.[38]

6.3 The State party further notes that, even in cases in which medical examinations, including those carried out by Amnesty International Danish Medical Group, indicate that the injuries of an asylum seeker are consistent with his or her statements in relation to torture, if the Board disregards the asylum seeker's account because it cannot in any way be considered as fact that either he or she has been involved in politics or that any such

[32] The complainant refers to *F.K. v. Denmark*. See para. 5.2 above.

[33] The complainant does not provide further information on this matter.

[34] Ibid.

[35] See communication No. 609/2014, *R.K. v. Australia*, decision adopted on 11 August 2016, para. 8.4.

[36] The State party refers to the jurisprudence of the Human Rights Committee, according to which it is generally for the organs of the State party to review and evaluate facts and evidence in order to determine whether a risk exists, unless it is found that the national authorities' evaluation was clearly arbitrary or amounted to a denial of justice. See communications No. 2378/2014, *A.S.M et al. v. Denmark*, Views adopted on 7 July 2016; No. 2272/2013, *P.T. v. Denmark*, Views adopted on 1 April 2015; and No. 2426/2014, *N. v. Denmark*, decision adopted on 23 July 2015.

[37] See communication No. 565/2013, *S.A.P. et al. v. Switzerland*, decision adopted on 25 November 2015, para. 7.4.

[38] See *M.O. v. Denmark* and *Cruz Varas and others v. Sweden*, para. 4.7.

political involvement has been discovered by the authorities, there is no need to allow a medical examination for signs of torture. In such cases, a medical examination conducted by the Department of Forensic Medicine will not provide further clarity on the matter, as such an examination will only show that the asylum seeker suffered an injury that may have been inflicted in the way described by him or her, although it could also have been inflicted in numerous other ways. Therefore, there is no need to postpone a decision on a case in order to wait for a medical examination, which will not in any event clarify why an asylum seeker has suffered the injuries he or she claims to be the result of torture. The State party refers to *Z. v. Denmark*,[39] in which the Committee considered that although the State party rejected the complainant's request to conduct a medical examination, the complainant had failed to substantiate basic elements of his claims, and therefore found that it had not been demonstrated that the authorities had failed to conduct a proper assessment of the risk of torture.[40]

6.4 The State party also refers to *M.B. et al. v. Denmark*,[41] in which the Committee considered that, given that the complainant had specifically requested the Board to order a medical examination for signs of torture in order to prove his credibility, an impartial and independent assessment could have been made of whether the reason for the inconsistences in his statement were due to the torture that he had been subjected to. The State party indicates that it disagrees with this decision, as there is no obligation for the State party to conduct a medical examination every time an asylum seeker requests one, including in those cases in which the complainant has provided medical information indicating that he or she has been subjected to torture. The State party adds that the decision on whether to order a medical examination is based on an individual assessment in each case.

6.5 With respect to the complainant's argument that he should benefit from a different standard of proof because he was subjected to torture in the past, the State party indicates that when an asylum seeker makes inconsistent statements, the Board takes into account the person's explanations of the causes of such inconsistencies in its assessment of his or her credibility. In the case of persons who have been tortured, the Board, in practice, sets a more lenient standard of proof. However, in the complainant's case, the Board did not accept as fact the complainant's statement that he had been subjected to torture in Pakistan, due to the inconsistencies in crucial elements of his grounds for asylum.

6.6 Concerning the complainant's allegations in relation to the new bill (No. 97) introduced into Parliament amending the Acts on Legal Aid and the Administration of Justice in respect of lodging and pursuing complaints with the international complaints bodies set up under human rights conventions,[42] the State party notes that the bill has no impact on the complainant's case, as it only governs eligibility for free legal aid to submit complaints to international bodies, and reiterates that the decision to carry out a medical examination to verify signs of torture is closely related to the credibility of the asylum seeker.

6.7 With respect to the complainant's allegation that the Immigration Service did not even ask the complainant to fill in a consent form for a medical examination, the State party notes that the Board is an independent quasi-judicial body that makes an impartial assessment of evidence. Therefore, if it had found it relevant to order such an examination, it could have asked the complainant's consent during his hearing before it. Furthermore concerning the complainant's allegation that the Board has only ordered two medical examinations to look for signs of torture in 2015, the State party indicates that, taking into account that the Board awarded asylum in 81 per cent of cases, in 2015, and that, in cases in which it grants refugee status, there is no need to order a medical examination, it is normal that such examinations were requested in only a few cases.

6.8 Concerning the situation of Christians in Pakistan, the State party reiterates that their situation is not such as to consider that the complainant should, if returned, be deemed to be

[39] See communication No. 555/2013, *Z. v. Denmark*, decision adopted on 10 August 2015, para. 7.5.

[40] See communication No. 571/2013, *M.S. v. Denmark*, decision adopted on 10 August 2015, para. 7.6.

[41] See communication No. 634/2014, *M.B. et al. v. Denmark*, decision adopted on 25 November 2016, para. 9.6.

[42] See para. 5.6 above.

at risk of torture because of his religion. It refers to publicly available background information,[43] according to which some Christians suffer discrimination and attacks in Pakistan, and that there are reports of a general failure of the police to investigate, arrest or prosecute those responsible for the abuse suffered by religious minorities.[44] However, there is also evidence of measures taken by the authorities to protect them against violence.[45] The State party reiterates that Christians can practise their religion in Pakistan, and adds that, although they face increased discrimination and are targeted because of their religion, the evidence shows that they are not, in general, subject to a real risk of persecution or inhuman or degrading treatment.[46] The State party refers to a decision of the Human Rights Committee regarding a complaint filed by a Christian from Pakistan alleging persecution because of her religion. Taking into account the recent amendments to the blasphemy laws, and the comprehensive and thorough examination of the evidence conducted by the State party, according to which the author had not been in conflict with the authorities in Pakistan, the Committee considered that her deportation to Pakistan would not violate article 7 of the Covenant on Civil and Political Rights.[47]

Issues and proceedings before the Committee

Consideration of admissibility

7.1 Before considering any complaint submitted in a communication, the Committee must decide whether it is admissible under article 22 of the Convention. The Committee has ascertained, as it is required to do under article 22 (5) (a) of the Convention, that the same matter has not been and is not being examined under another procedure of international investigation or settlement.

7.2 The Committee recalls that, in accordance with article 22 (5) (b) of the Convention, it shall not consider any complaint from an individual unless it has ascertained that the individual has exhausted all available domestic remedies. The Committee notes that, in the present case, the State party has not contested that the complainant has exhausted all available domestic remedies.[48] The Committee therefore finds that the requirement under article 22 (5) (b) of the Convention has been met.

7.3 The State party maintains that the complaint should be declared inadmissible, pursuant to rule 113 (b) of the Committee's rules of procedure, as it is manifestly unfounded. The Committee, however, observes that the complainant has sufficiently detailed the facts and the basis of his claims of violations of the Convention and thus considers that the complaint has been sufficiently substantiated for the purposes of admissibility. As the Committee finds no further obstacles to admissibility, it declares the communication submitted under article 3 of the Convention admissible and proceeds with its consideration of the merits.

Consideration of the merits

8.1 The Committee has considered the communication in the light of all the information made available to it by the parties, in accordance with article 22 (4) of the Convention.

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[43] See United Kingdom, Home Office, "Country information and guidance. Pakistan: Christians and Christian converts"; and European Asylum Support Office, *Country of Origin Information Report. Pakistan. Country Overview* (Luxembourg, Publications Office of the European Union, 2015). Available at www.easo.europa.eu/sites/default/files/public/EASO_COI_Report_Pakistan-Country-Overview_final.pdf.

[44] See United Kingdom, Home Office, "Country information and guidance. Pakistan: Christians and Christian converts", p. 9.

[45] Ibid.

[46] Ibid. p. 6.

[47] See Human Rights Committee, communications No. 2351/2014, *R.G. et al. v. Denmark*, decision adopted on 2 November 2015; and No. 2291/2013, *A and B v. Denmark*, Views adopted on 13 July 2016.

[48] See, for example, communication No. 455/2011, *X.Q.L. v. Australia*, decision adopted on 2 May 2014, para. 8.2.

8.2 The issue before the Committee is whether the forced removal of the complainant to Pakistan would constitute a violation of the State party's obligation under article 3 of the Convention not to expel or to return ("refouler") a person to another State where there are substantial grounds for believing that he or she would be in danger of being subjected to torture.

8.3 The Committee must evaluate whether there are substantial grounds for believing that the complainant would be personally in danger of being subjected to torture upon return to Pakistan. In assessing that risk, the Committee must take into account all relevant considerations, pursuant to article 3 (2) of the Convention, including the existence of a consistent pattern of gross, flagrant or mass violations of human rights. However, the Committee recalls that the aim of the evaluation is to establish whether the individual concerned would be personally at a foreseeable and real risk of being subjected to torture in the country to which he or she would be returned. It follows that the existence of a pattern of gross, flagrant or mass violations of human rights in a country does not as such constitute sufficient reason for determining that a particular person would be in danger of being subjected to torture on return to that country; additional grounds must be adduced to show that the individual concerned would be personally at risk. Conversely, the absence of a consistent pattern of flagrant violations of human rights does not mean that a person might not be subjected to torture in his or her specific circumstances.[49]

8.4 The Committee recalls its general comment No. 1 (1997) on the implementation of article 3 of the Convention, according to which the risk of torture must be assessed on grounds that go beyond mere theory or suspicion. While the risk does not have to meet the test of being highly probable (para. 6), the Committee recalls that the burden of proof generally falls on the complainant, who must present an arguable case that he or she faces a foreseeable, real and personal risk.[50] The Committee also recalls that it gives considerable weight to findings of fact that are made by organs of the State party concerned,[51] while at the same time it is not bound by such findings and instead has the power, provided by article 22 (4) of the Convention, of free assessment of the facts based upon the full set of circumstances in every case.

8.5 In assessing the risk of torture in the present case, the Committee notes the complainant's contention that there is a foreseeable, real and personal risk that he will be persecuted and tortured if returned to Pakistan by members of the Muslim community or by the authorities or the police owing to his Christian beliefs and activities, taking into account that he has already been harassed, threatened and attacked for those reasons. In this regard, the Committee notes the complainant's allegations that he has received two threatening letters and that he has been attacked and beaten on at least two occasions in connection with his religious activities: first by three unknown men while he was driving his taxi in August 2011 and, second, on an unspecified date, by four police officers who took him to a police station where they beat him, hung him from the ceiling upside down and plugged water into his nose, following which they falsely accused him of illegal possession of alcohol. The Committee also notes the State party's observation that its domestic authorities found that the complainant lacked credibility because, inter alia, when his car was stolen, he only reported the theft to the police, but he did not report the threatening letter he had received. The State party also argued that the author had given contradictory statements regarding the threatening letter dated 15 January 2010, as he initially said that it was anonymous, but he later submitted to the Board a letter signed by a religious group, and gave contradictory statements regarding how he had got this letter: he initially indicated that it was not in his possession, but after his asylum request was rejected, he offered it as evidence to the Board, indicating that he had given it to his mother who kept it and sent it to him.

[49] See, for example, communications No. 550/2013, *S.K. et al. v. Sweden*, decision adopted on 8 May 2015, para. 7.3; and No. 716/2015, *S.T. v. Australia*, decision adopted on 11 May 2017.

[50] See, inter alia, communications No. 203/2002, *A.R. v. Netherlands*, decision adopted on 14 November 2003; and No. 258/2004, *Dadar v. Canada*, decision adopted on 23 November 2005.

[51] See, inter alia, communication No. 356/2008, *N.S. v. Switzerland*, decision adopted on 6 May 2010, para. 7.3.

8.6 The Committee also takes note of the complainant's claim that, although he showed the Board the alleged signs of torture on his body and requested that the Board carry out a specialized medical examination in order to verify whether those injuries were sustained as a result of torture, the Board rejected his request for asylum without ordering such an examination. It also notes the State party's argument that such an examination was not relevant because, whatever its outcome, it could not serve to prove that the complainant had been subjected to abuse because of his activities for the Christian organization Jesus Hope for Life and that such an examination would not demonstrate that the risk for the complainant in Pakistan would be personal and real at the present time. The Committee also notes the State party's argument that the medical certificate submitted by the complainant does not substantiate that he is a victim of torture, as the injuries described could be the result of torture or "of many other causes, such as an accident or war".

8.7 The Committee observes that it is not disputed that the complainant was detained by the police in Pakistan, subjected to violence and accused of illegal possession of alcohol.[52] The Committee also notes that the Board considered that, although the complainant made consistent statements regarding the events claimed as his grounds for asylum, in his interviews before the Immigration Service and the Board, he provided inconsistent statements as to the threatening letter dated 15 January 2010, including as to who signed it and as to the way in which he obtained it. The Committee further notes the complainant's claim that he has indicated to the authorities of the State party that he could not remember many events clearly because of the blow he suffered to the head while being tortured, and that he should therefore have benefited from a different standard of proof.[53]

8.8 The Committee recalls that, although it is for the complainant to establish a prima facie case to request asylum, it does not exempt the State party from making substantial efforts to determine whether there are grounds for believing that the complainant would be in danger of being subjected to torture if returned.[54] In the circumstances, the Committee considers that the complainant provided the State party's authorities with sufficient material to support his claims of having been subjected to torture, including a medical report,[55] and for them to further investigate his claims through, inter alia, a specialized medical examination. Therefore, the Committee concludes that by rejecting the complainant's asylum request without further investigation of his claims or ordering a medical examination, the State party has failed to determine whether there are substantial grounds for believing that the complainant would be in danger of being subjected to torture if returned. Accordingly, the Committee considers that, in the circumstances, the deportation of the complainant to his country of origin would constitute a violation of article 3 of the Convention.[56]

9. The Committee, acting under article 22 (7) of the Convention, concludes that the complainant's removal to Pakistan by the State party would constitute a violation of article 3 of the Convention.

10. Pursuant to rule 118 (5) of its rules of procedure, the Committee invites the State party to inform it, within 90 days from the date of the transmittal of the present decision, of the steps it has taken to respond to the above observations.

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[52] See paras 2.6 and 4.8 above.

[53] See para. 5.5 above.

[54] See *K.H. v. Denmark*, para. 8.8; and *F.K. v. Denmark*, para. 7.6.

[55] See para. 2.3 above.

[56] See, for example, *K.H. v. Denmark*, para. 8.8.